

# *Workers' Compensation Training Perspectives*

## Newsletter from the Office of Monitoring, Audit and Enforcement

### Maine Workers' Compensation Board

June 2015

Volume 2, Number 1



Paul H. Sighinolfi  
Executive Director/Chair

Office of Monitoring,  
Audit and Enforcement

Maine Workers'  
Compensation Board

27 State House Station  
Augusta, Maine 04333

Contacts:

Gordon Davis  
Director of Audits  
Training Coordinator  
(207) 287-6327

E-mail  
[Gordon.Davis@Maine.Gov](mailto:Gordon.Davis@Maine.Gov)

Anne Poulin  
Secretary Associate  
(207) 287-7067

E-mail  
[Anne.Poulin@Maine.Gov](mailto:Anne.Poulin@Maine.Gov)

Website:  
[www.maine.gov/wcb/](http://www.maine.gov/wcb/)

The general mission of the Maine Workers' Compensation Board is to serve the employees and employers of the State fairly and expeditiously by ensuring compliance with the workers' compensation laws, ensuring the prompt delivery of benefits legally due, promoting the prevention of disputes, utilizing dispute resolution to reduce litigation and facilitating labor-management cooperation.

### *Compliance Training for Employers/Insurers*

A few seats are still available for the Board's next open training session June 25-26, at the Maine Department of Labor, 45 Commerce Drive in Augusta. Upcoming sessions are scheduled for October 29-30 (already starting to fill), and January 28-29. Please contact Anne Poulin to reserve a spot at any of these sessions.

The Board also continues to be busy doing on-site training for insurers, self-insurers, and third party administrators. If you are thinking about on-site training for your organization, please contact Gordon Davis.

---

### *Topic of the Month – Do I Discontinue with a WCB-4 or a WCB-8?*

When an employee is being paid without an award or a compensation payment scheme, the employee benefits may not be reduced or discontinued without 21 days' notice (WCB-8) unless:

- There is a Board decision ordering a reduction or discontinuance
- A statutory provision requires an offset or discontinuance
- The employee returns to work with or receives an increase in pay from the employer of injury

Examples of when to file the WCB-4 and WCB-8:

1. Employee's AWW is \$600, returns to work for employer of injury earning \$620
  - WCB-4 Discontinuance (with or without restrictions or limitations)
2. Employee's AWW is \$600, returns to work without restrictions for employer of injury earning \$560 and there are no conflicting medical records with respect to the lack of restrictions
  - WCB-4 Discontinuance (maintain proof of full duty release on file)
3. Employee's AWW is \$600, RTW with restrictions or limitations for employer of injury earning \$560
  - If reduced earnings are strictly due to economic conditions (i.e. overtime no longer available), you may discontinue with a WCB-8 (21 Day)
  - Otherwise, you should file a WCB-4 Modification (to partial)
4. Employee's AWW is \$600, RTW for employer of injury earning \$560 because he/she chooses not to work optional overtime which was worked prior to the injury
  - If RTW is with restrictions or limitations, WCB-8 (21 Day) Discontinuance
  - If return is with no restrictions or limitations, you may file a WCB-4 Discontinuance (maintain proof of full duty release on file)
5. Employee's AWW is \$600, RTW with a different employer, with restrictions or limitations
  - If earnings are at or above AWW, discontinue with a WCB-8 (you may take a credit for earnings per procedure in rules chapter 8, section 15)
  - If earnings are below AWW, file a WCB-8 (21 Day) Modification (to partial)

Note that a discontinuance or reduction with a WCB-8 (21 Day) notice cannot become effective prior to 21 days after the date of mailing. For example, if the form is mailed on May 5, the effective date cannot be prior to May 26. Note also, the WCB-8 copies to the Board and the employee must be sent certified mail.

# ***Workers' Compensation Training Perspectives***

## **Newsletter from the Office of Monitoring, Audit and Enforcement**

### **Maine Workers' Compensation Board**

**June 2015**

**Volume 2, Number 1**



Paul H. Sighinolfi  
Executive Director/Chair

Office of Monitoring,  
Audit and Enforcement

Maine Workers'  
Compensation Board  
27 State House Station  
Augusta, Maine 04333

**Contacts:**

Gordon Davis  
Director of Audits  
Training Coordinator  
(207) 287-6327

E-mail  
[Gordon.Davis@Maine.Gov](mailto:Gordon.Davis@Maine.Gov)

Anne Poulin  
Secretary Associate  
(207) 287-7067

E-mail  
[Anne.Poulin@Maine.Gov](mailto:Anne.Poulin@Maine.Gov)

**Website:**

[www.maine.gov/wcb/](http://www.maine.gov/wcb/)

The Board welcomes your feedback, suggestions, and other input regarding this publication or its training program. Please email Gordon Davis with your comments.

### ***Reminder – New Max Rate Effective July 1st***

The Department of Labor's new State Average Weekly Wage (SAWW) as of July 1, 2015 is \$763.87. For injuries on or after 1/1/2013, the max rate is \$763.87 (100% of SAWW), for injuries prior to 1/1/2013 it is \$687.48 (90% of the SAWW). Those currently receiving the maximum benefit will need to be adjusted to the lower of the new max rate or their own rate, effective 7/1/2015, even if that day falls in the middle of a payroll period. A WCB-4 modification must be filed. Further information will be available on the Board's website prior to July 1.

---

### ***From the (e)Mail Bag – Questions from Adjusters***

Q: The employee has suffered a new lost time injury, and was receiving workers' compensation benefits from a prior injury for part of the 52 weeks prior to the subsequent injury. How do I report those weeks on the wage statement?

A: All earnings and any WC benefits received should be reported on the WCB-2. However, weeks in which the employee received benefits should be excluded from the AWW calculation. Note in the comments section which weeks were excluded and why.

Q: In the claim above, the subsequent injury was with a new employer, and the employee was earning significantly less than with the previous employer. Do I include all earnings with both employers (other than those excluded above) in calculating AWW?

A: Per §102(4)(G), the AWW for the subsequent injury should "...represent the employee's weekly earning capacity at the time of the later injury in the employment in which the employee was working at that time...." Thus, the wages from the previous employer would likely not be included. However, if the lower earnings capacity was caused by the prior injury, the previous AWW should be used (see *Legassie v. Securitas, Inc.*).

---

### ***Reporting Earnings on the Wage Statement (WCB-2)***

A committee in the legislature has given tentative approval to a change in wage reporting requirements on Board form WCB-2, Wage Statement, adding the following to §303 of the Act: "The wage statement must report the earnings or wages of the employee on a weekly basis, except that if the employee is paid on other than a weekly basis, the employer may report the earnings or wages on that basis." Thus, if the employee is being paid on other than a weekly basis (bi-weekly, semi-monthly, monthly, etc.), the claims unit and audit division will likely be accepting those earnings reported that way on the form. We will know if this is the case at the close of this legislative session. It should be noted, however, that in order to determine an accurate Average Weekly Wage (AWW) actual weekly earnings should be reported for the week of injury, and for the week of hire if it falls within the 52 weeks being reported, and any weeks in which there were NO earnings should be so indicated. Post-injury earnings must still be tracked based on actual weekly earnings to accurately determine partial benefits and to determine if the injured employee has earnings at or above his/her AWW for possible discontinuance. Also be aware of various other state and federal laws which require keeping records of actual weekly earnings and, in some cases, daily earnings for non-salaried employees.